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REMARKS

ON A

DANGEROUS MISTAKE

MADE AS TO THE

Eastern Boundary

OF

LOUISIANA.

by Benjamin Vaughan



BOSTON :

PRINTED BY J. T. BUCKINGHAM.

November, 1814.

Checked
May 1913
SCHOOL

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DISTRICT OF MASSACHUSETTS, to wit:

District Clerk's Office.

BE IT REMEMBERED, that on the ninth day of November, A. D. 1814, and in the thirty-ninth year of the Independence of the United States of America, Joseph T. Buckingham, of the said District, has deposited in this office the Title of a Book, the right whereof he claims as Proprietor, in the words following, *to wit*:

"Remarks on a Dangerous Mistake made as to the Eastern Boundary of Louisiana."

In conformity to the Act of the Congress of the United States, entitled, "An Act for the Encouragement of Learning, by securing the Copies of Maps, Charts, and Books, to the Authors and Proprietors of such Copies, during the times therein mentioned;" and also to an Act, entitled, "An Act supplementary to an Act entitled, An Act for the Encouragement of Learning, by securing the Copies of Maps, Charts, and Books, to the Authors and Proprietors of such Copies during the times therein mentioned; and extending the Benefits thereof to the Arts of Designing, Engraving, and Etching Historical and other Prints."

WILLIAM S. SHAW,
Clerk of the District of Massachusetts,

REMARKS, &c.

A DISPUTE has taken place between Spain and the United States arising out of the purchase made by the latter of LOUISIANA and the little island of *New-Orleans*, which is connected with it. Before we treat of this dispute, we must notice some general facts.

These two colonies once belonged to France, and formed the basis of the speculations of the famous French Mississippi company under Mr. Law. For reasons hereafter to be mentioned, France voluntarily gave both of them to Spain, on November 3, 1762; the very day when both parties signed the preliminaries of the peace of 1762-3 with England. While Spain still remained in possession of these two colonies, difficulties *prior* to that just alluded to had occurred between herself and the United States; namely, as to our southern boundary, as to our navigation of the Mississippi, and as to a place for depositing the goods of our citizens navigating that great river. These more early concerns together with others were the occasion of the treaty of Oct. 27, 1795, between Spain and the United States. But five years afterwards (namely, on Sept. 30, 1800) Spain was directed by Bonaparte to make over to him Louisiana and New-Orleans, in exchange for some pretended grants in Italy. On the 30th of April, 1803, Bonaparte, in order to raise \$11,750,000 in cash, and to prevent the seizure of these colonies by England sold both of them to the United States for \$15,000,000; the difference, (or one quarter part) of the original purchase money being *reserved* to pay the demands of American claimants on the French government. The United States, being thus possessed of Louisiana and New-Orleans, endeavoured to make the boundaries of Louisiana *extend* into West Florida (which,

together with East Florida, had long belonged to Spain) and, in the event, took military possession of the districts, which they claimed there.* This last is the subject of dispute now to be discussed.

As we presume, that our administration has taken very questionable ground on this occasion, we shall endeavour to prove the justness of this opinion in what follows; ranging our materials under several heads, from which we shall draw the necessary conclusions.

I. *An account of the form of the transfer of Louisiana and New-Orleans to the United States, as made by Bonaparte in 1803.*

In the above named treaty of purchase dated April 30th, 1803, we read thus: "Art. 1st. Whereas by the third article of the treaty concluded at St. Ildefonso on the 9th Vendemiaire, an. IX. [or Oct. 1, 1800] between the first consul of the French republick and his Catholick Majesty [the King of Spain ;] it was agreed as follows: 'His Catholick Majesty promises and engages on his part to cede to the French Republick, six months after the full and entire execution of the conditions and stipulations relative to his Royal Highness the Duke of Parma,† the COLONY OR PROVINCE OF LOUISIANA, with the extent that it has in the hands of Spain, and that it had when France possessed it, and such as it should be‡ after the treaties SUBSEQUENTLY entered into between Spain and OTHER states :' and whereas in pursuance of the [above]

* If the claim of our administration goes eastward as far as the river Perdido, (which lies between Mobile and Pensacola) this is above 240 English miles in an air line from the bank of the Mississippi, and the average depth of this tract from north to south is above 50 English miles. See Mr. Elliott's map, E. or No. 5, as given in his Journal, of which more will be said hereafter.

† The Duke of Parma was one of the King of Spain's family and was made king of Etruria (or Tuscany.) This is the pretended Italian grant just spoken of. How far Bonaparte fulfilled the promise to his widow, (who was daughter to the King of Spain) except as to her mere title, is well known, for she was not only driven from her nominal kingdom but imprisoned, while Bonaparte obtained the value of \$15,000,000 as the equivalent of this pretended grant.

‡ Say rather (pursuant to the original French, *doit etre*) such as it ought to be; that is, such as it became after the treaties, which occurred while it belonged to Spain. N. B. The treaty states, that the articles were agreed to in the French language.

Treaty (and particularly of the third article) the French republick has an incontestible title to the domain and to the possession of the said territory ; the first consul of the French republick (desiring to give to the United States a strong proof of his friendship) doth hereby cede to the said United States in the NAME of the French republick forever and in full sovereignty the said territory (with all its rights and appurtenances) *as fully and in the same manner as they have been ACQUIRED by the French REPUBLICK in virtue of the above mentioned treaty concluded with his Catholick Majesty.* Art. 2d. In the cession made by the preceding article are included the adjacent *islands* belonging to Louisiana, &c. Art. 3d. *** The commissary of the French republick shall remit all military posts of New-Orleans and other parts of the ceded territory to the commissary or commissioners named by the President of the United States."

This is the origin and nature of the title of the United States to Louisiana and New-Orleans.

But it is to be observed, first, that *New-Orleans* is no where referred to in the above treaty or in the two documents which follow it, unless as an "island" belonging to Louisiana, or as a mere part of Louisiana.

Secondly, The cession at large here referred to was limited by three conditions. 1st. The whole territory was ceded to us exactly as Spain then held it. 2d. It was ceded to us exactly as France had held it under its monarchy ; but subject to the effect of Spanish treaties made after Spain had come into possession. 3d. It was ceded to us exactly in the form in which the French republick had recently acquired it from Spain (namely in 1800.) The remark is obvious, that these conditions are all to be interpreted consistently with each other.

These latter observations will be better understood, when we discover the whole of the circumstances, which occasioned limits to be put to the old extent of Louisiana to the east, and when we comment more at large on the above treaty.

II. An account of the cession of the SPANISH claims to the Floridas made to England in 1762-3.

It is to be observed, that, if France formerly sought to extend the bounds of Louisiana towards Florida,* Spain also sought to push

* Florida, as we shall find, at first, had not been divided into East and West Florida, and its dimensions, at that period, were far inferior to those of the two modern Floridas united.

agreed, that, for the future, the confines between the dominions of his Britannick majesty, and those of his most *Christian* majesty, [that is, the king of France] in that part of the world, shall be *irrevocably fixed by a line drawn along the MIDDLE of the RIVER MISSISSIPPI from its source, as far as the river Iberville, and from thence by a line drawn along the middle of this river, [that is, the Iberville] and that of the lakes Maurepas and Pontchartrain to the sea.* And to this purpose, the most Christian king cedes in full right, and GUARANTEES to his Britannick majesty, the river and port of Mobile and EVERY THING that he possesses, or ought to have possessed† on the LEFT‡ side of the river Mississippi; except the town of New-Orleans, and the island in which it is situated, which shall remain to France;|| Provided, that the navigation of the river Mississippi shall be equally free as well to the subjects of Great Britain as to those of France, in its WHOLE length and breadth, from its source to the sea, (and that part expressly, which is between the said island of New-Orleans and the RIGHT bank of the river) as well as the passage both in and out of its mouth. It is further stipulated that the vessels belonging to the subjects of either nation shall not be stopped, visited, or subject to the payment of any duty whatever."§*

* The river Mississippi furnishing the waters of the Iberville, and the Iberville running through the lakes Maurepas and Pontchartrain to the sea, we are at liberty to conceive of the island of New-Orleans as formed by a fork of the Mississippi and the sea; the several rivers which run either into the Iberville or the above lakes, being then considered merely as tributary waters to the Mississippi. Hence, it becomes natural to treat the island of New-Orleans sometimes as an appendage, and sometimes as a part of Louisiana, which, in its more *limited* shape, had the Mississippi for its eastern boundary.

† The *definitive* treaty says, "ought to possess," in the present tense.

‡ If a man stands in a boat with his back toward the higher part of a river, and looks down it, the bank to his left is called the *left* bank, and the other, the *right* bank.

|| Thus New-Orleans was the only object excepted, to the east of the Mississippi.

§ For the *preliminaries* of the treaty between France, Spain and England, dated Nov. 3, 1762, see Debrett's Collection of Treaties, (preceded by Mr. Charles Jenkinson's Discourse) Vol. III. 166. For the *definitive* treaty which followed these preliminaries on Feb. 10th, 1763, see the Annual Register of the preceding year (1762, page 333,) or any Collection of Modern Treaties, as Debrett's, III. 177, or that of Chalmers, II. 229.

IV. An account of the proceedings of Great Britain as to the two Floridas.

The territory thus given up to England by SPAIN (as lying between the eastern *bank* of the Mississippi and the sea to the east and south;) and at the same moment also by FRANCE (as extending from the *middle* both of the Mississippi and of the boundary waters of New-Orleans in an easterly direction indefinitely, but so as to reach the Mobile or Tombeeky;) this territory, we say, was thrown by England into ONE GENERAL MASS, and was then (by a proclamation of the king England, dated October 7, 1763) divided into *East Florida* and *West Florida*.* The *boundary* of each part, however, is merely to be held as the boundary of a provincial government, and subject to internal changes. But, as regards foreign transactions, the *northern* boundaries proclaimed in 1763 were adhered to with respect to the United States in 1782, and with respect to Spain in 1783; as will immediately be stated. As to the *southern* boundary of the two Floridas, it reached like the northern from the Mississippi to the Atlantick.

It was at the close of the American war that Great Britain abandoned to *Spain* the territory which she had thus divided into East and West Florida. The *definitive* treaty with Spain in 1783 expresses the surrender thus: ‘ His Britannick Majesty likewise cedes and guarantees to his Catholick Majesty [that is, the king of Spain] East Florida as also West Florida.’

It is important to mention this cession, for as Louisiana and New Orleans join line and line to the Floridas to the west, without any intermediate territory, their boundaries in that quarter are *one and the same*, so that to name the boundary of the one is to indicate that of the other.

By the above cession to Spain, the concern of Great Britain with the Florida boundaries became terminated.

But we are now to add (and it is a matter interesting to the history of the United States) that, *previous* to this cession, Great Britain had agreed, that the boundaries of the two Floridas to the north should become the boundaries of the *United States* to the south. She had full right to fix on this line, the provisional articles of her peace with the United States having been signed on November 30, 1782, and also ratified before the signature of the above

* See note A. at the end.

preliminaries of peace with Spain in 1783.* Spain herself, also, as the proprietor of the Floridas, again accepted these boundaries in 1795, as will immediately be mentioned, and thus the transaction as to the boundaries was fully confirmed, as regards the United States.

V. *An account of the joint and separate proceedings of Spain and the United States, as to the two Floridas, previously to 1800 and 1803.*

In the treaty between ourselves and Spain dated 1795, noticed above (entitled a Treaty of friendship, limits, and navigation,) it was decided that the boundary between the United States and the two Floridas should be thus 'designated.' The line was to have its BEGINNING ON THE RIVER MISSISSIPPI, in N. lat. 31°; thence to be drawn to the middle of the river Apalachicola (or Catahouche;) thence along the middle of that river to its junction with the Flint [river] thence directly to the head of St. Mary's river; and thence down the middle of that river to the Atlantick Ocean.† These boundaries, as we have intimated, have been unanimously agreed upon by Great Britain, Spain, and the United States, as the common boundaries of the United States and of the Floridas, in the points where they touch each other, namely from the Mississippi to the Atlantick ocean.

The Spanish territory here in question was called by the first article of the above treaty of 1795, 'the Spanish colonies of East and West Florida' and by its 3d and 5th articles they were called "*the Two Floridas,*" which names, therefore, are to be held as mutually received by Spain and the United States in the senses which they naturally bear.

These territories (as we have seen) had, moreover, passed into the hands of Spain, in 1783, by a *British* title; which title had the peculiar advantage of extinguishing the old *French claims* to every part of them. This convenience must have been the cause which induced the Spanish court to adopt the division and the

* See the provisional articles of peace between the United States and Great Britain in Gordon's History of the American Revolutionary War, vol. IV. 360. They are to be found also in some of the collections of the Laws of the United States.

† See the treaty of 1795 in various collections of the Laws of the United States.

names provided for these territories by the British proclamation of 1763; for in the maps of D'Anville and many others we find mention made of *Floride* or *Florida* in the singular number, and where this happened Louisiana at the same time was commonly made to cover a large space of country to the *east* of the Mississippi. This remark is of some moment in the present controversy, as a total change has taken place on this subject when the Floridas have become spoken of in the *plural* number, and Louisiana stands limited to the east by the Mississippi. But to return to the treaty of 1795.

This treaty of 1795 was not content with merely "designating" the course of the boundary between the United States and the Floridas; for it directed the appointment of a commissioner and a surveyor by each government, in order "to *run* and mark this boundary." It added; 'they shall make plats [or maps] and keep journals of their proceedings, which shall be considered as part of this convention [or treaty] and shall have the same force as if the same were inserted therein.'

A private journal by Mr. Andrew Ellicott (the American commissioner, who was employed between 1796 and 1800 in the prosecution of this concern) has long been before the publick, accompanied with maps and an Appendix. From this work (printed at Philadelphia in 1803 and containing 450 quarto pages) the following particulars are selected, which doubtless found a place in his official report. 1. A post or pillar was erected eighty-eight French feet from the *MARGIN* of the Mississippi in N. lat. 31° , with Spanish memorials on its southern face and American memorials on its northern face. At the same time, marks, mounds, stones or posts were suitably placed in the course of the survey along the rest of the boundary, and particularly in cases where astronomical facts were to be recorded (on which the survey was chiefly founded.) 2. Though the series of the miles measured was numbered in an easterly course, from the *utmost bounds to which the annual inundation* of the Mississippi extended on the eastern side in 31° N. lat. yet an opportunity was taken to carry back this line to the *very margin* of the river; and this margin was found to be two miles and one hundred and eighty rods distant to the *west* from the above "*high-water mark*." 3. Plats and journals duly authenticated appear to have been furnished pursuant to the treaty. 4. After the report of the work performed was agreed to, posses-

sion of the territory was either held, or after a certain time assumed, by the respective parties in conformity to the line thus run.*

Three other circumstances resting on the evidence of Mr. Ellicott may now be noticed to advantage; and they will be given according to the order of time, in which they occurred.

1. This gentleman, who collected on the spot, during his official operations, the history of what he relates, informs us, "that the country on the *EAST* of the Mississippi and *NORTH* of the island of Orleans was *PEACEABLY* possessed from the peace of 1763, till *after* the commencement of our revolutionary war in the year 1775, by *GREAT BRITAIN*." This possession by the *British* of the *western* parts of West Florida, during this period, shows the efficacy of the treaty of 1763-3, which gave the two Floridas to the British.†

2. At the *commencement* of our revolutionary war Great Britain still held the *south-west* part of the present territory of the U. States, and she continued to hold it until 1779, when it was surrendered, not to us, but to a military force of the Spaniards, who had then become our allies. Though the claim of Great Britain to these districts was finally abandoned to *us* by the provisional articles of our peace of November 30, 1783, yet *Spain* remained in possession till the lines between the United States and the Floridas were on the point of being run, pursuant to the treaty of 1795; a part of the inhabitants being in favour of her government.‡

3. The treaty, by which we afterwards purchased the title of Bonaparte to *Louisiana*, was dated April 30, 1803, and Mr. Ellicott thus *interprets* its principal article, *within* three months after its date at Paris. "It does not appear (he says) by the cession of Louisiana to the United States, that we obtain the *whole* of *both* sides of the Mississippi, for by consulting No. 5 of the maps, it

* The authority for the *four* assertions in this paragraph will be found in Mr. Ellicott's work as follows: Consult, for Article 1, his Appendix, p. 49-57, and particularly the report by William Dunbar, esq. who acted for the king of Spain. For Art. 2, consult the Appendix, p. 55, 56 and map No. 2. For Art. 3, consult the Journal, p. [193, 194,] [278, 279,] and [296.] For Art. 4, consult the Journal, p. [129-133] and many other passages.

† See the Journal, p. [129-133] and many other passages.

‡ See many parts of the Journal. Indeed Mr. Ellicott seems to have been a principal agent in procuring the evacuation of the country by the Spaniards, while on his way to run the boundary.

will be seen, that the island of New Orleans (which lies on the east side of the Mississippi) only extends north to Manshack.* From thence, northerly (along the east side of the river) to the northern boundary of the United States, is STILL HELD by his Catholick Majesty as a part of West Florida." This opinion, it is to be observed, is given in a preface to the above work, bearing date July 23, 1803; and as it proceeds from the commissioner appointed by our administration for settling this very boundary, it is invaluable, since he was fully informed of facts from history, from treaties, from local information, and from communications received from his own government. It is, in short, the testimony of an official and intelligent man given impartially. It is also not pronounced once only, but he several times repeats it in different shapes.

What has disturbed this respect and deference on our side once paid to the Spanish rights in this quarter, will be inquired into under our next head.

VI. An account of the proceedings of the United States after their acquisition of Louisiana in 1803.

As soon as the United States had acquired Louisiana, the boundaries of the Floridas were contemplated under a new aspect by our administration. It was no longer upon the bounds to Louisiana derived from republican France that they chose to rest, but on the bounds once set up by France under its monarchy, for these latter bounds (as they thought) would secure to them the western parts of West Florida.

Under colour of this claim, our administration is understood to have made official demands on Spain for a part of West Florida, as if it belonged to Louisiana. They are also said to have made an official appeal for support in this claim to Bonaparte's ministry. From neither quarter did they obtain the satisfaction desired, owing to considerations to be mentioned under the next head. Thus disappointed in its negociations, our administration next resorted to arms, and took military possession of the parts of West Florida in question,—intimating, however, that it might quit them again, if Spain should show a better title.

In this position, the affair, at this moment, rests: that is, we have made an unfounded demand, and we have seized and still hold the object of it, in spite of remonstrance.

* See note B. at the end.

VII. *An account of the motive for ceding Louisiana to Spain in 1762, with the details and consequences of that cession.*

As it may have seemed extraordinary, that France should have made a present of Louisiana to Spain, and the transaction is important to the present dispute, we shall give the necessary statement of it in this place.

Louis XIV. of France, the third sovereign of the *Bourbon* family,* succeeded in placing his grandson Philip (duke of Anjou) on the throne of Spain ; and this Spanish branch of the Bourbons succeeded also in giving sovereigns to Naples and to Parma. Hence Louis XV. of France took occasion to conclude a treaty with Spain, with a view to unite all the Bourbon sovereigns, which treaty was dated Aug. 15, 1761, and was called "*The family compact of the Bourbons*," an opening being left in it for the accession of Naples† and Parma.

By this treaty it was agreed "whoever attacked one crown attacked the other." On this ground, Spain soon joined France in the war she was then maintaining against Great Britain. But Spain quickly losing the Havanna and Cuba to Great Britain, France became convinced by this and other circumstances, that it was for the interest of both to bring the war to an immediate termination.—But now another principle came into play, for it had been agreed in the above family compact, that when France and Spain should terminate by peace the war they should have suffered in common, they would balance the *advantages* which one of the two powers might have received against the *losses* of the other ; so that (in the conditions of peace, as in the operations of war) the two monarchs of France and Spain throughout the extent of

* France reckons three great races of kings ; namely, the *Merovingian*, beginning, as some say, with Clovis in 481 ; the *Carlovingian*, beginning with Pepin in 751 ; and the *Capetian*, beginning with Hugh Capet in 987. Henry III. ended the line of *Valois* under the Capetian race and was succeeded in 1589 by the famous Henry IV. who was also of the Capetian race but of the *Bourbon* family. He began the *Bourbon dynasty*, and, adding the kingdom of Navarre to that of France, he was called king of *France and Navarre*, which title was borne by his descendants Louis XIII. XIV. XV. XVI. XVII. (who died a child and prisoner to his subjects) and XVIII. (who is just placed on his throne.)

† In this treaty the king of Naples is called king of the *Two Sicilies*, a title repeatedly given to the king of Naples, while possessed of the two Sicilies.

their empire, should be considered and would act, as if they formed but *one and the same power.** But, notwithstanding this condition, it so happened, when the peace of 1762—3 was negotiated, that France possessed no *balance* of advantages to sacrifice to England, in order to procure for Spain the restoration of the Havana and Cuba. France, therefore, determined to give up one of her own *unconquered territories* in order to buy such a peace for Spain, and this territory was Louisiana, which then crossed the Mississippi to the east. This was to be made over to Spain on condition of her joining with France in a transfer to England of every thing lying to the east of the Mississippi, England having consented to receive the territory thus bounded, as the equivalent for her Spanish conquests. France having no other motive whatever for this great sacrifice, it appears to have been agreed with the *Spanish negotiator* at Paris, that the *formal offer* of Louisiana to his own court should take place through himself on the very day (November 3, 1762) when this tract of country was *offered* to England.—Two circumstances rendered this a secure proceeding; for, first, France merely *offered* (but did not at that time cede) Louisiana to Spain; and, next, even the cession of Florida to *England* was open to recall (the preliminaries of the peace being made subject to ratification.) In the event, however, the whole transaction became established, by the acceptance of Louisiana, under its new limits, on the part of Spain, on the 13th November, 1763, and also by a ratification of the preliminaries with England, on the 22d of the same month.†

Hence it appears that these were not merely *contemporary* but *connected* transactions; all being to be established together or all to be rejected together. All, however, being established together, the acceptance of Louisiana is to be considered as operating *back* to the date of the offer of it; while the *ratification* of the pre-

* For a copy of the Treaty or Family Compact of the House of Bourbon (Pacte de Famille de la Maison de Bourbon) see Chalmer's Collection of Treaties, I. 552, Debrett's Collection, III. 70, or Almon's Remembrancer for 1778, the original, in the last case, accompanying the translation.

† For the date of the *acceptance* of the offer of Louisiana, see Louis XV's letter to Mons. D' Abbadie in Mr. Ellicott's Journal, p. [128] or in the Annual Register for 1765, p. [271.]—For the date of the *ratification* of the preliminaries of 1762, see the Annual Register for 1762, p. [108.]

liminaries equally extends back to the date of signing them.* To dispute this, would in nothing vary the issue of the discussion, for the definitive treaty by being signed after the date of the acceptance of Louisiana, rendered valid the cession to England of the surplus part of Louisiana (namely, that part lying to the east of the Mississippi and the Iberville.) If the private cession of Louisiana to Spain had failed for want of the due formalities, the treaty alone would have substantiated the transfer of this *surplus* part; for the claims of France and Spain together (which covered the whole country) were fairly made over to England. It is true, that neither France nor Spain *named* the Floridas in their deeds of cession; but they *described* the territory in such clear terms, as would have conveyed it, had it reached even to the eastern hemisphere; both governments used *similar* descriptions; and both afterwards acted as if their descriptions had been effectual. Nor were the United States of a different opinion, till they became possessed of Louisiana.

What is thus directly proved by the treaty of 1762—3, is confirmed by other circumstances, of which a part have already been mentioned. For example. If it be true, that the cession of Louisiana made by France to Spain in 1762 was designed to preserve the Floridas intire in order to be given intire to England; the parties would not at such a moment have loaded the territory east of the Mississippi with new claims of so transitory a nature, that the treaty must instantly extinguish them; for whether this part of Louisiana rested with France or with Spain, each abandoned its separate title and guaranteed the cession. The British, likewise (according to Mr. Ellicott's account) came into actual possession of the Floridas close up to the Mississippi, immediately after this treaty of 1762—3, without exciting the jealousy either of France or of Spain. France, likewise, was equally silent, when Spain adopted the British names and the British division of the two Floridas in 1783. The same acquiescence was seen in France in 1795, when Spain and the United States concurred in tracing their common boundary in this quarter to the very bank of the Mississ-

* A ratification, according to the course of proceedings in modern times, being a mere confirmation by a principal of what is done by a political agent, the original instrument, (of which the date commonly makes a very important part) holds in its *original* form from the *moment of its ratification*.

sippi.* When Spain, also, in 1800, relinquished Louisiana and New-Orleans to Bonaparte, that greedy man omitted to hint, that he had any title to the Western part of West Florida as an appendage to the cession. Lastly, when Bonaparte sold Louisiana and New-Orleans in 1803, to the United States, he expressly declared, that these possessions were to be held by the United States only as the *Republique* of France itself had received them from Spain.

Such are the confirmations of the general fact, that, after 1762-3, Louisiana and New-Orleans were separated from the two Floridas *by the Mississippi*, and that it is in this form only that we now ought to hold them.

OBSERVATIONS

ON THE PRECEDING FACTS AND ARGUMENTS.

From the statements in our introduction and the seven heads which have followed it, we venture to affirm, that Louisiana, in the hands of Spain after the treaty of 1763, did not cross the Mississippi; and that whatever Spain held there, which was *not Louisiana and New-Orleans*, was part of the Floridas; the Mississippi lying between the two tracts of country, like a gulf not to be passed.

This question, argued politically, has offered no difficulties.—Nor would it experience any if tried according to the principles of common law. Where there are various claimants to a real estate, is it not known that we may still obtain a solid title by receiving a conveyance under warranty of all the claims of all the claimants, united in one deed, in face of each other, and for a valuable consideration? And such a conveyance was made by the two sole pretenders to the ceded territory in 1762—3, and that cession was held so sound that *one of the pretenders* afterwards adopted the title, thus given to it, for her own use, and the consideration, namely,

* The acquisition of the two Floridas promised a grand and simple outline for the British possessions on the North American continent at this period. To the North stood the Frozen Ocean—to the East the Atlantic—to the South the Gulf of Mexico—and to the West the Mississippi: but these were boundaries, which Great Britain knew not how to retain longer than from 1763 to 1776.

Western or modern Louisiana remained in the hands of Spain for thirty-eight years, and was then bartered away by Spain to France the *donor* of it.

Still further. The title to the Floridas, which is thus consolidated, and which, as we have shewn, has been first warranted, and then confirmed by *two successive ratifications*, carries its date as far back as 1762-3, thereby adding the *prescriptive* title of above half a century to the *legal* title.

If all this be true, what (it will naturally be demanded) has our administration to offer in vindication of its measure? As our administration appears to have published nothing *official* on this subject, it becomes us to consider what can be said in favour of its conduct on this occasion, and then to make the necessary replies.

1st. It may be urged on behalf of our administration, that a purchaser *has a right to look into his title-deeds*, and to take advantage of what he finds in them; and that, as, in ancient times, Louisiana crossed the Mississippi to the east, it is open to us to adopt the more extensive boundary. But, whatever a power, tenacious like Spain, and sagacious like France, has in turn overlooked, since 1762, while it held the property in question, may be suspected as worthy of little attention on our side. Each knew, as every politician and lawyer does, that the best titles, by subsequent deeds, become liable to limitations; that such limitations, in the present instance, took place in 1762-3; and that we must abide by the effect of them. If France, indeed, in 1803, had thought that she had more land to sell than lay on the western side of the Mississippi, she might have asked more for the bargain than fifteen millions of dollars.

2d. It may be said, that the *treaties* of 1800 and 1803 positively *declare*, that Louisiana is now to be held "in the same extent, that it had, when FRANCE possessed it," (that is, under its monarchs.) These words, however, are followed by others, which create limitations to this "extent," for the extent is said to be "such as it should be [or ought to be] after the treaties *subsequently entered* into between Spain and *other states*." These are words not to be silently passed over, as usually has happened in this controversy, since they have an important meaning. We shall instantly demonstrate this, after observing, first, that the word "*subsequently*," signifies "*after* the time, when *France gave up the territory*;" and, next, that the words "*other states*,"

may relate to any foreign state EXCEPT France, with whom this agreement was made.*

We maintain, then, that, subsequently to the time when France held Louisiana (under its monarchs) Spain has made at least two treaties with other states; one of cession to England in 1762-3, and another of arrangement with ourselves in 1795—that by the first the boundaries of the two Floridas were *formed*, and by the second they were acknowledged—and that the Mississippi was made their *western limit*. Of consequence, the Mississippi becomes the *eastern counter-limit of Louisiana*. Louisiana to the *west* was differently circumstanced, since it could not be the subject of treaty with other states, as being bounded solely by other Spanish possessions. We may now, then, begin to discover the opposite design of each of the clauses. The *first* stated, that Bonaparte was to receive Louisiana (that is to the west) as France held it during its monarchy, without any regard to alterations of its shape, produced by mere *colonial regulations* on the part of Spain. The *second* clause was designed to secure to Spain the boundaries which it had both *given* to England and *received back* from England, as the *western limit* of the Floridas. It was, also, calculated to establish various concessions made to the United States in 1795, and thus to maintain the reputation of Spain for dignity and good faith:—and on this ground the United States, in fact, appealed to it in their disputes with France between 1800 and 1803, in cases, which bore relation to it. We have thus interpreted the two clauses in perfect consistence with each other, which it will be found difficult to do upon any other plan, as will be experienced by those who make the trial. Upon our interpretation, it is easy to understand, what *that* Louisiana is, which Spain lately held, which she yielded to Bonaparte, which Bonaparte sold to the United States, and which corresponds to her treaties with other states. Bonaparte, indeed, well knew, that France and Spain had joined in reducing the claims of Louisiana to the east, for the purpose of making room for the extension of Florida to the west; since this was a fundamental object in the treaty and the proceedings of 1762-3, both with Spain and with France.

* It will be remembered that these clauses belong to the ORIGINAL treaty between Bonaparte and Spain, and appear in the treaty between Bonaparte and us merely by way of *recital*.

Probably, these are the only specious arguments, on this subject, to be urged on the side of our administration. However, to give our government every chance of being justified, we shall notice three other grounds of defence, though they are of very inferior value.

1. It may be said, that the French negotiators gave it to be understood *verbally* that a cession of Louisiana, according to its *old* limits, was intended, not only to the west, but to the *east*. To this no other remark need be made than that the *words* of the treaty (as they stand *ratified* on *BOTH* sides) are alone to be attended to. In private deeds the language of the negotiating *agents* is rarely appealed to; but, in publick proceedings, this is out of the question;—first, because the ceremony of the ratification takes the construction of a publick treaty out of the hands of its negotiators, and, next, because were this sort of evidence encouraged, it might introduce great uncertainty and intrigue into negociations of the utmost national importance. This, therefore, is an argument destitute of weight in theory, and is, also, said to have been found wanting in efficacy in practice.

2. Some may take a fancy to admit, that the title to Louisiana given to Spain in 1762-3 was, in truth, only partial, in order to assert, as a consequence of this, that France had a right to sell to us the rest of Louisiana in 1803. But, the contrivance is useless, since Bonaparte's treaty of 1803 expressly declares, that he sold us only what the French *republick* had acquired from Spain by the *specifick* treaty of 1800. Besides, what reservations could France have made in 1762-3, when, in one and the same breath, she gave Louisiana to Spain, and joined Spain in a treaty, whereby each gave to England whatever it possessed or was entitled to east of the Mississippi.

3. Other persons may say, that our administration was entitled to take advantage of the *confusion in Spanish affairs*, and thence to *assume* the western parts of West Florida. But, we reply, that the claims of our administration on these parts were made *before* this confusion, on grounds totally independent on this circumstance.

According to our title-page, therefore, we continue to affirm, that the mistake made by our government on the subject now before us, is a *dangerous* mistake, for Spain considers our pretensions as founded on sophistry in words, where there was an evident perspicuity in sense, and that we are in fact moved by a love of

plunder and a desire to take advantage of the weak. Appearances, as to these subjects, are certainly against us, and such conduct threatens us with *dangers* from various quarters. For instance, it is dangerous to seize a territory by arms, under pretence, that we shall give it up, if we find the seizure wrong. It is dangerous to attempt to secure objects of this kind by fomenting insurrections; a proceeding which is laid to our charge, not only here, but in East Florida. It is dangerous also, to excite the jealousy of such powers as are jointly interested in *watching* the temper of our government, particularly on the subject of extension of territory.* Lastly, the plan of accumulating extensive territory is dangerous as regards ourselves, especially when associated with the principle of forming new states beyond our original limits, which are to become members of our General Union.

But we may properly, and with some satisfaction, close our inquiry in this place with some short remarks as to the views and temper pursued in it. First, we have neither touched on the power of Bonaparte to *assume* Louisiana, nor, when it was once assumed, to *sell* it again. Next, we have not blamed the purchase of Louisiana, even with an *uncertain* title, for this purchase gave us a temporary peace, without inconvenience or dishonour, and at a small comparative expense. Thirdly, we pretend to no share in dictating future proceedings. Lastly, we have avoided every harsh insinuation, indelicate expression, or criminating conclusion, being content with solid facts, and plain arguments, expressed in civil language, without regard to party. If there be any, who wish to see considerations of *prudence* taken into account along with those

* Upon consulting our maps, we shall perceive, that the next subject of alarm to the courts of Europe, on account of our movements in Louisiana, will be the mines for precious metals, in Mexico and Peru; mines, which for ages have formed the chief supply of these articles for the whole world. Even in the shape of coin, there is no civilized country, from England to China, from the north pole to the south, where the Spanish dollar is not known. Many reflecting men have long remarked on the good fortune of mankind at having these means of formidable enterprize in the safe keeping of the quiet, harmless Spaniards of modern times; and even the philanthropists, so called, living out of the bounds of the United States, would scarcely vote that these magazines of mischief should be subject to the command of our bold and speculating nation. Every honest American must himself dread the result.

of right and of justice, we reply, that this is a subject into which we shall no further enter than has been done in the preceding paragraph. *Prudent* men will find enough to reflect upon there; and to speak to others, might be useless at the present moment, or may be left to other persons.

POSTSCRIPT.

There are several short views to be taken of the matters discussed in the foregoing pages, which may claim a place here.

For example: We may treat our subject under the form of an alternative, by considering all the several shapes which the question may be made to take, and adopting that, which seems most reasonable. Thus we may say, that the western parts of West Florida belonged either to France singly, or to Spain singly, or else to both, or else to neither. But the *preliminary* treaty gave them to England, whether they belonged to France wholly, or in part, or to Spain wholly, or in part, since it gave to England all to the east of the Mississippi belonging to *either* of them. The critical part of the gift was Spanish, if the cession of Louisiana had taken effect; otherwise it was French. This general gift by each was repeated in the same form, or still more distinctly, by the *definitive* treaty of 1763, ninety days after Spain had accepted the Louisiana cession. And since *each* act of transfer was ratified, the conclusion can admit of no doubt. *England* was quickly put into possession, while France did not even issue the order for putting *Spain* into possession, till April 21, 1764; and the acts of taking possession, slowly followed.* The above reasoning, we think, holds good,

* England was in possession before Oct. 7, 1763, if we are to judge by her proclamation of that date, issued by advice of the privy council, and founded on letters patent for organizing the government of the new colonies. We may at least conclude, that England saw *no difficulty*, at that date, likely to attend the act of *taking possession* of East and West Florida, beginning the latter from the Mississippi; and history relates none, except as regarded the *Indians of the interior* (against whom European governments, as well as our own, have often made expeditions, within the limits of territories long held after the usual manner). But we do not mean to say, that titles cannot pass without possession accompanying them. Such a doctrine would destroy our own claim to Louisiana, acquired by the treaty

supposing either France or Spain concerned in the property in question. But if neither was the proprietor, we then come to the last branch of our dilemma, and may affirm, that by common rules, England had a right to assume it as vacant territory, and to grant it afterwards to Spain, who, therefore, may still be supposed to hold it under the British title which she has found so useful to her.

To the above summary mode of treating the question, we shall add a second in the form of a *simple statement*. We affirm, then, that France was to offer, and Spain to accept, Louisiana, on condition that England should receive a portion of it. As both France and Spain held territory to the eastward of the Mississippi, the form used for the cession to England answered not only for the eastern part of Louisiana (by whichever of them it was held) but also for Florida. Before the preliminary or rough draught of the treaty of 1762-3 was ratified, Spain accepted the cession of Louisiana, and consequently she accepted it with the limits given to it by this draught. The definitive or corrected copy of this treaty, containing the same limitations, (except that they were rendered still more precise) confirmed this consent of Spain to the measure. Possession was taken in consequence, and was so held by England or by Spain for nearly half a century, till Spain was deprived of it by force. It will be difficult in a disputed case to receive a more simple and satisfactory solution than that here given.

The impressions to be made by these short representations will be increased by observing, that there are *three defects* in every defence which has been made publick in support of the conduct of our administration.

First defect. No reason is offered for the cession of Louisiana by France to Spain. This cession was made neither to induce

of April 30, 1803; for the late Major Amos Stoddard tells us, that *Lower* Louisiana was not surrendered by Spain to Bonaparte's agent, till early in December, 1803. He himself, as he adds, was "the constituted agent of the French republick in Upper Louisiana, and in her name, received possession of that province the 9th day of March, 1804, and the *next day* transferred it to the United States." See his book, in the preface, and at page 102. His mistake as to the date of the first possession obtained by the English in the Floridas (which he places in 1764) is, in effect, answered by the various facts stated in this note, not to say, that possession may have been taken by England of different parts of the two Floridas successively. He will be evidence, however, for the tardy possession of Louisiana taken by Spain under the act of cession from France.

Spain to enter into the family compact, nor into the war with England, for she had already adopted both, but to provide means for terminating the war, in the manner stated above. *Second defect.* No motive can be assigned, but that which we have assigned for the reference to foreign treaties made in the treaty of 1800. *Third defect.* No attempt has been made to explain, why France allowed Spain to express her cession to England as beginning from the Mississippi, when Spain might have described it as beginning from the Atlantick and going westward, till it met the possessions of France in Louisiana. But, on the supposition, that France had given up Louisiana to Spain, all the jealousy of France as to the claims of Spain towards the Mississippi would of course cease.

These defects are important, and the two first are of an amount to be fatal to any cause, and especially to a cause which is weakly supported by arguments of a positive description.

NOTES.

Notes A. and B. referred to in the preceding remarks, in which farther proofs will appear that New Orleans may be considered as an island formed by the Mississippi.

NOTE A. See p. 9.

West Florida was thus bounded by the proclamation of George III. viz. "To the *southward* by the Gulf of Mexico (including all islands within six leagues of the coast from the Apalachicola to lake Pontchartrain); to the *westward*, by the said lake, the lake Maurepas and the river Mississippi; to the *northward*, by a line drawn due east from that part of the river Mississippi, which lies in 31° N. lat. to the river Apalachicola (or Catahouche); and to the *eastward* by the said river." See Ann. Register for 1763, p. [209.]

If this copy of the proclamation be correct, it appears that in the western boundary the Iberville was considered by England as a *leg of the Mississippi*; as the Mississippi originally formed the bed of the Iberville, at least in its upper part; and at that part also it wholly supplies it with whatever streams it at any time possesses.

Were we to give any other interpretation to the boundary, as thus proclaimed, it would strike off part of the island of New-Orleans, which would be contrary to design, to treaties, to the proceedings which followed under the proclamation, and to the general good understanding, which continued long after to subsist between Great Britain on one side and France and Spain on the other.

We observe, moreover, in general as to the bounds here given, that England had a right to make them and to vary them, as she pleased, in all directions; the country now possessed by the United States in these quarters being then all her own. But, it will be observed, at the same time, that she adhered to the northern lines marked out in the proclamation, when she came to a settle-

ment of the boundaries of the United States : the effect of which was to communicate the same boundaries to the northern part of the two Floridas, when soon after ceded to Spain ; boundaries, as we have seen, which were mutually acceded to, in 1795, by ourselves and by Spain, as proposed by England, and to which the southern boundaries of necessity correspond.

NOTE B. See p. 13.

Manshack stands immediately to the north of the point, at which the Iberville takes its departure out of the Mississippi to go through the lakes connected with it to the sea. Mr. Ellicott does not, in fact, however, treat the Iberville as a leg of the Mississippi throughout the year ; yet he speaks thus of it for a part of the year. "During the annual inundation [of the Mississippi] a considerable stream of water called the *Bayou Manshack** or Iberville leaves the Mississippi at Manshack, and, after joining the Amit, falls into lake Maurepas, thence into Pontchartrain, and communicates with the Gulf of Mexico near the mouth of Pearl (or Half-way) river. During the passage of the water along this channel, New Orleans stands upon an island, which may be considered as the *Delta of the Mississippi*. This channel might be rendered navigable for boats during the inundation by removing the timber and rubbish, with which it is, at present, choaked up." Were this done, Mr. Ellicott conceives it would afford a much easier and cheaper conveyance, than that by the way of New Orleans. For the rest see Mr. Ellicott's Journal, p. [124, 125.]

As to the phrase "Delta of the Mississippi," it refers to the island formed between the outer legs of the Egyptian Nile at its mouth and the sea ; this island resembling the Greek letter Δ (or delta). Whatever, therefore, in certain respects, may be said of the one delta may be said of the other ; that is, both are islands (we mean so long as the Iberville has water in it). It is true, that the late Major Stoddard has called "all the Low Country between the sea and the elevated grounds" near the lower parts of the Mississippi, by the name of the Delta, paying no regard to the legs of the Mississippi ; but this is contrary to the common ac-

* *Bayou Manshack* signifies the channel or passage of Manshack.

ception of the word Delta with geographers and others. Mr. Ellicott certainly adopts a different sense for the word in question, and with this only we claim concern.

MEMORANDUM.

On the subject of this dispute respecting the title of the United States to the western parts of West Florida, see the following publications.

1. A newspaper publication signed *Verus*, which was much circulated, when the subject of the above controversy first became publick.
2. 'The Impartial Inquirer, being a candid examination of the conduct of the President of the United States in execution of the powers vested in him by the Act of Congress of May 1, 1810, to which are added some reflections on the invasion of the Spanish territory of West Florida, by a citizen of Massachusetts.' Printed by Russel and Cutler, Boston, 1810.
3. 'Reflections on the cession of Louisiana to the United States, by Sylvestris,' printed in 1803, by Mr. Samuel Harrison Smith of Washington; the printer of the Universal Gazette, a newspaper employed by Mr. Jefferson for his official communications to the publick.
4. The respective Memorials or Reports of Mr. Livingston and of several committees in Congress, recommending the purchase, First, of Louisiana and, Then, of the Floridas, with the various acts and journals of Congress on the subject of these territories, and on the occupation of the Floridas.
5. Sketches, historical and descriptive, of Louisiana, by the late Major Amos Stoddard, Philadelphia, 1812.
6. Mr. Andrew Ellicott's work noticed above.
7. For authorities concerning the fruitless negotiations between England on one side, and France and Spain respectively on the

other, see Debrett's Collection of Treaties, vol. III. p. 80—166, and the Annual Register for 1762, p. [185—203.]

Most of these articles are known or supposed to come from persons who had, in some respects, the means of speaking from official sources on the subjects in question.

The *dates* of some of these pieces merit regard, as shewing the impressions of the writers of the moment.

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